

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

EDWARD PALMORE,

Petitioner,

v.

PATRICIA A. HICKS, WARDEN,

Respondent.

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**Civil Action No.
5:05-CV-414 (CAR)**

**ORDER ON THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court is the United States Magistrate Judge's Recommendation [Doc. 42] that the present petition for habeas corpus relief be denied. Petitioner filed a timely Objection [Doc. 43] to the Recommendation. Having carefully considered the matter, however, this Court agrees with the findings and conclusions of the United States Magistrate Judge and finds Plaintiff's objections to be without merit. In his Objection, Petitioner contends that the Magistrate Judge erred in failing to recognize that his Fourth Amendment rights were violated by the trial court's failure to conduct a suppression hearing and formally rule upon his motion to suppress illegally seized evidence prior to trial. Petitioner is correct that a state prisoner may be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial if the State failed to provide an opportunity for litigation of the Fourth Amendment claim. See Stone v. Powell, 428 U.S. 465, 494 (1976). However, Petitioner has failed to show that he was denied such an opportunity in this case. A trial court need not necessarily convene a hearing on a motion to suppress in every case. The issue can obviously be litigated by other means, including objection

to the admission of evidence at trial. Petitioner, with the assistance of counsel, also had ample opportunity to raise and litigate this issue on direct appeal as well as in his state habeas proceedings. The Recommendation of the United States Magistrate Judge is therefore **ADOPTED** and **MADE THE ORDER OF THE COURT**. The petition of Petitioner Edward Palmore for relief under provisions of 28 U.S.C. § 2254 is hereby **DENIED**.

SO ORDERED, this 26th day of May, 2009.

S/ C. Ashley Royal
C. ASHLEY ROYAL
UNITED STATES DISTRICT JUDGE

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